

Exhibit 1: Maritime shows no evidence of construction of actual and timely construction in Dec. 2013 motion for summary decision.

There is nothing in the attached Motion for Summary Decision that contains any evidence of actual and timely construction, including the Motion's reference at footnote 29 to the prior motion that was filed on 5/8/13 (only reference to past FCC Orders, station activation notices—which are only statements by the licensee, and a vague reference to “numerous other documents produced in discovery” (see Exhibit 5 to this Request). That motion filed on 5/8/13 referred to the same facts as the December 2, 2013 motion, and in addition, vaguely stated, “Numerous other documents produced in discovery overwhelmingly demonstrate that the Category 5 licenses were timely constructed and placed in operation,” but without pointing to any specific factual evidence in the record in the hearing proceeding to show actual construction.

Exhibit 1: see
pages 7-10,
paragraphs 12-16,
containing
Maritime's facts
and arguments re:
station
construction.

REDACTED PURSUANT TO PROTECTIVE ORDER IN FCC EB DOCKET NO. 11-71

Accepted/Filed

DEC 2 2013

FCC Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**JOINT MOTION OF ENFORCEMENT BUREAU AND MARITIME
FOR SUMMARY DECISION ON ISSUE G**

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SUMMARY

1. Issue (g) of the HDO requires that the Presiding Judge determine (a) whether Maritime's site-based AMTS facilities were constructed (*i.e.*, placed in operation) within two years of their grant, as required by Section 80.49(a)(3) of the Commission's rules, and (b) whether operations of any of Maritime's site-based facilities have been permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.

2. There are 16 site-based AMTS facilities that remain at issue in the above-captioned proceeding: call signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), KAE889-48 (Tiger Mountain), WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WRV374-35 (Rehobeth), and WRV374-40 (Hamden). The undisputed facts demonstrate that these 16 site-based facilities were timely constructed in accordance with Section 80.49(a) of the Commission's rules and that the operations of these stations have not been permanently discontinued. Accordingly, this Joint Motion requests that the Presiding Judge grant summary decision on Issue (g).

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To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**JOINT MOTION OF ENFORCEMENT BUREAU AND MARITIME
FOR SUMMARY DECISION ON ISSUE G**

1. The Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) have reached agreement on the material questions of fact related to Issue (g) of

the HDO and respectfully jointly move for summary decision on this Issue.¹ Issue (g) of the HDO requires that the Presiding Judge determine whether AMTS site-based facilities licensed to Maritime were constructed (*i.e.*, placed in operation) within two years of their grant, as required by Section 80.49(a)(3) of the Commission's rules, and whether operations of these site-based facilities have been permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.² For the reasons set forth below, the Presiding Judge can now entirely resolve Issue (g).

Procedural Background

2. On May 8, 2013, after the close of discovery concerning Issue (g), Maritime filed a motion for summary decision (Maritime's Motion) on this Issue.³ This motion, like Maritime's earlier motion for partial summary decision filed on August 31, 2012,⁴ argued that Issue (g) should be deemed moot as to licenses or facilities that Maritime had agreed to cancel or delete.⁵ Maritime's Motion also argued that summary decision was proper on the question of whether the authorizations initially issued to Waterway Communications System, Inc. (Watercom Licenses) were constructed within two years from the date of their grant in accordance with Section 80.49(a) of the Commission's rules.⁶ Finally, Maritime's Motion argued that it was entitled to

¹ As the Bureau and Maritime recently informed the Presiding Judge, the parties have been actively engaged in negotiations to resolve the remaining substantive questions pertaining to Issue (g) of the HDO. *See* Joint Proposed Schedule, filed Aug. 27, 2013; Joint Response to Motion to Amend Schedule, filed Oct. 21, 2013. Mr. Havens was invited to participate in these discussions. *See* Email from Robert J. Keller dated Sept. 12, 2013, filed herewith as Exhibit 1, [REDACTED]

[REDACTED] Mr. Havens did not join the call. Maritime's counsel reached out again to Mr. Havens. *See* Email from Robert J. Keller dated Nov. 6, 2013, filed herewith as Exhibit 2. Mr. Havens did not agree to engage in discussions concerning Issue (g).

² *See Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO) at ¶ 62(g).

³ *See* Maritime's Motion for Summary Decision on Issue G, filed May 8, 2013.

⁴ *See* Maritime's Motion for Partial Summary Decision, filed Aug. 31, 2012.

⁵ *See* Maritime's Motion at pp. 4-5.

⁶ *See id.* at p. 6.

summary decision on the questions of whether the non-Watercom licenses were timely constructed and whether operations of Maritime's site-based facilities were permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.⁷

3. Mr. Havens filed an Opposition to Maritime's Motion, which as discussed in greater detail below, raised only legal challenges – not factual ones – to summary decision.⁸ The Chief, Enforcement Bureau (Bureau), by her attorneys, agreed with, in part, and opposed, in part, Maritime's Motion.

4. Specifically, the Bureau agreed that Issue (g) should be deemed moot as to those authorizations Maritime agreed to cancel and delete and that the Watercom Licenses had been timely constructed.⁹ The Bureau also agreed that all but three of the non-Watercom Licenses had been constructed within the two years required by Section 80.49(a).¹⁰ The Bureau opposed Maritime's legal argument that the Commission's AMTS license rules were ambiguous and failed to provide Maritime with sufficient notice of what would constitute permanent discontinuance.¹¹ The Bureau urged the Presiding Judge to reject Maritime's legal argument and instead to "consider the factual record developed in the hearing proceeding before reaching a

⁷ See *id.* at pp. 6-12.

⁸ See Havens' Opposition to Motion for Summary Decision, filed May 22, 2013 (Havens Opposition). Notably, Mr. Havens filed this Opposition "on behalf of and as representative and non-attorney counsel to the SkyTel legal entities...." Havens Opposition at p. 1. The Presiding Judge had previously informed Mr. Havens that any motion in which he "attempts to represent the SkyTel entities will be struck with respect to arguments made on their behalf." Order, FCC 13M-8 (ALJ, rel. May 1, 2013) at p. 2. Mr. Havens' Opposition should have been struck in its entirety.

⁹ See Enforcement Bureau's Response to Maritime's Motion for Summary Decision on Issue G, filed May 22, 2013 (Bureau's Response), at pp. 2-5.

¹⁰ See *id.* at pp. 5-9. The Bureau asserted that there were genuine issues of material fact concerning the timely construction of three stations, which no longer remain at issue. See *infra* note 15.

¹¹ See *id.* at pp. 9-17.

conclusion on Maritime's site-based licenses."¹²

5. In *Order*, FCC 13M-16, the Presiding Judge agreed with the Bureau that the Commission's precedent provided AMTS licensees with notice that they "must keep their stations operating, or else be able to demonstrate that they have exercised due diligence in resuming operations, or the authorizations in question will be determined to have automatically terminated."¹³ The Presiding Judge suggested, however, that there may be "a genuine issue of material fact as to whether Maritime attempted to comply with any reasonable interpretation of Section 1.955(a)(3)."¹⁴

6. The Bureau and Maritime have reached agreement on the material facts related to the construction and operational status of the following 16 site-based AMTS facilities: WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), KAE889-48 (Tiger Mountain), WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WRV374-35 (Rehobeth), and WRV374-40 (Hamden). The Bureau and Maritime thus seek summary decision with regard to these 16 facilities. In the interest of expediting resolution of this matter so that creditors can be paid and resources conserved, Maritime has agreed to cancel the remaining 73 site-based licenses.¹⁵ This action, together with the instant Joint Motion,

¹² *Id.* at p. 17.

¹³ *Order*, FCC 13M-16 (ALJ, rel. Aug. 14, 2013) at p. 11, ¶ 27.

¹⁴ *Id.* at p. 13, ¶ 30.

¹⁵ The Bureau and Maritime, concurrently with this Joint Motion for Summary Decision, have filed a limited stipulation in which Maritime has agreed to file applications to delete from its licenses authority for the remaining 73 site-based facilities. *See Limited Joint Stipulation Concerning Issue G Licenses*, filed Dec. 2, 2013.

will resolve any outstanding substantive issues concerning Issue (g).¹⁶

7. As set forth below, the undisputed facts demonstrate that the 16 remaining site-based facilities were constructed within the two years required by Section 80.49 of the Commission's rules and that operations at these facilities have not permanently discontinued pursuant to Section 1.955(a). Pursuant to Section 1.251(a)(1) of the Commission's rules, therefore, summary decision is appropriate and should be granted.¹⁷

I. Summary Decision Is Appropriate On The Question Of Timely Construction

A. The Definition Of "Construction" Is Purely A Legal Question

8. The undisputed facts concerning the 16 site-based AMTS facilities at issue here demonstrate that they were timely constructed, and neither the Bureau nor Maritime believes that the term "construction" must be further defined to resolve this Issue.¹⁸ In previous filings, however, Mr. Havens has argued otherwise and suggested that summary decision on the question of timely construction of Maritime's site-based licenses is improper because the Presiding Judge has not determined how to define the term "construction" for the purposes of this proceeding.¹⁹ But even if the term "construction" were in need of additional interpretation, that question would not raise an issue of material fact that would require a hearing. Rather, summary decision could resolve that legal question.

¹⁶ The Bureau and Maritime previously filed a joint stipulation in which Maritime stipulated that it had filed, or agreed to file, applications to cancel the remaining authorizations designated for hearing. See Limited Joint Stipulation Between Enforcement Bureau And Maritime And Proposed Schedule, filed May 31, 2012.

¹⁷ See 47 C.F.R. § 1.251(a)(1). See also *In the Matter of Summary Decision Procedures*, 34 F.C.C.2d 485, 487 ¶ 6 (1972) (explaining that the function of a summary decision ruling is to promote "decisions on the merits without a trial where no genuine issue of material fact exists" and to avoid a useless hearing).

¹⁸ See Joint Draft Glossary in Response to Order FCC 12M-53, filed Dec. 6, 2012 (Joint Glossary), at pp. 6-7.

¹⁹ See e.g., Havens Opposition at p. 7; see also Authorities in Support of the Havens/SkyTel Definition of "Constructed" and "Construction," filed Dec. 5, 2012 (Havens Authorities), at p. 5; Joint Glossary, Attachment A, at p. 8.

9. In particular, Mr. Havens has relied on Section 80.49(a)(3) of the Commission's rules to argue that Part 80 AMTS site-based licenses – such as the 16 that remain at issue in this proceeding – must meet “substantial service” requirements to be deemed timely constructed.²⁰ This argument raises a question of law, not fact, and it misreads Section 80.49(a)(3). That section plainly imposes a “substantial service” obligation related only to *geographic* AMTS licenses, not to the *site-based* AMTS licenses at issue here.²¹ Mr. Havens has offered no other legal basis for defining “construction” of a site-based license to include a “substantial service” requirement.

10. Mr. Havens has also argued that “continuity of service” should be considered a required element of an AMTS licensee's obligation to timely construct its site-based facilities.²² The Wireless Bureau has previously rejected this flawed argument.²³ In *Paging Systems, Inc.*, Mr. Havens argued that “the subject licenses terminated automatically pursuant to Section 1.946(c) of the Commission's Rules because they did not satisfy the continuity of service requirement in former Section 80.475(a).”²⁴ The Wireless Bureau explained that the Commission enacted Section 1.946(c) of its rules as part of the Universal Licensing System (ULS) in an effort to establish uniform procedures for using ULS to notify licensees about upcoming construction and coverage deadlines.²⁵ The Commission did not, however, intend to

²⁰ See *supra* note 19.

²¹ See 47 C.F.R. § 80.49(a)(3) (“Each AMTS coast station *geographic area licensee* must make a showing of *substantial service*. . . .”) (emphasis added).

²² See, e.g., Havens Authorities at pp. 5-7.

²³ See *In the Matter Paging Systems, Inc. and Maritime Communications/Land Mobile LLC*, 27 FCC Rcd 8028 (WTB 2012).

²⁴ *Id.* at 8029, ¶ 3.

²⁵ See *id.* at 8029, ¶ 5; see also 47 C.F.R. § 1.946(c).

change the underlying requirements for particular types of licenses.²⁶ The Wireless Bureau explained that “[i]n its discussion of the new procedures, the Commission used the term ‘construction requirement’ for site-based stations, and the term ‘coverage requirement’ for geographic licenses.”²⁷ Accordingly, the Wireless Bureau concluded that “for purposes of Section 1.946(c), the relevant requirement with respect to automatic termination [for site-based AMTS licenses] is the two-year construction period for each facility, rather than continuity of service.”²⁸ Thus, the Wireless Bureau concluded that continuity of service is not a required element of an AMTS licensee’s obligation to timely construct its system. Mr. Havens has offered no sound justification for the Presiding Judge to disregard the Wireless Bureau’s conclusions.

11. In sum, Mr. Havens has failed to present any legal basis for including either “substantial service” or “continuity of service” as a condition for a site-based AMTS station to be deemed timely constructed. In any event, summary decision is the proper vehicle to decide this legal question, if necessary.

B. The Undisputed Facts Demonstrate That The 16 Remaining Site-Based Facilities Were Timely Constructed

12. In its earlier motion, Maritime demonstrated the timely construction of each of the 16 remaining site-based licenses.²⁹ The Bureau concurred, and there has been no additional evidence that calls that conclusion into question.

²⁶ See *Paging Systems, Inc.*, 27 FCC Rcd at 8029-8030, ¶ 5.

²⁷ *Id.* at 8030, ¶ 5 (citations omitted).

²⁸ *Id.*

²⁹ See Maritime’s Motion at pp. 6-7.

13. First, Maritime argued that WHG750, one of the Watercom Licenses,³⁰ had been timely constructed in accordance with Section 80.49(a) of the Commission's rules as a result of the Commission's finding in *Waterway Communications System, Inc.*³¹ In that decision, the Commission concluded that the Watercom Licenses had been timely constructed.³² The Order stated that "Watercom was required to meet a schedule of construction ... and put the system into operation within the time we had allowed."³³ The Commission further noted that "there can be no question of spectrum hoarding or other dereliction in [Watercom's] inauguration of service."³⁴ Thus, the Bureau concurred that summary decision was appropriate as to the Watercom Licenses, including WHG750.³⁵ Mr. Havens' Opposition offered no basis for disturbing the Commission's Order.³⁶ Accordingly, summary decision should be granted on the question of whether WHG750 was timely constructed.

14. Second, Maritime argued that there were construction completion notifications demonstrating that the remaining 15 (non-Watercom) site-based facilities at issue had been timely constructed.³⁷ The Bureau agreed,³⁸ and there have been no recent developments or newly-added evidence to suggest a different outcome now. Accordingly, as to the timely

³⁰ See Maritime's Motion at p. 6. Maritime referred to authorizations WHG701 -703 and WHG705-WHG754 as the Watercom Licenses.

³¹ See *Waterway Communications System, Inc., Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 (1987) (Watercom Order).

³² See *id.*

³³ *Id.* at ¶ 16.

³⁴ *Id.*

³⁵ See Bureau's Response at pp. 4-5.

³⁶ Mr. Havens' Opposition raised only the legal argument concerning the definition of "construction" as a basis for denying summary decision of timely construction on the Watercom Licenses. See Havens Opposition at p. 7. For the reasons discussed above, Mr. Havens' proposed interpretation of construction should be rejected.

³⁷ See Maritime's Motion at pp. 6-7; see also Exhibits F and G thereto.

³⁸ See Bureau's Response at p. 6.

construction of call signs KAE889 (locations 3, 4, 13, 20, 30, 34, and 48) and WRV374 (locations 14-16, 18, 25, 33, 35 and 40), summary decision should be granted.

15. Mr. Havens previously argued that the construction completion notifications (which he refers to as activation notices) upon which Maritime relied are facially deficient.³⁹ Both the Wireless Bureau and the Commission, however, have rejected this argument.⁴⁰ In *Mobex Network Services*,⁴¹ the Wireless Bureau considered Mr. Havens' petition to deny applications filed by Mobex Network Services (Mobex) to both renew and transfer control of its site-based AMTS licenses, including call signs KAE889 and WRV374, which are at issue here. Mr. Havens argued that Mobex's AMTS licenses had not been timely constructed because "the activation notices that were filed contained numerous fatal defects"⁴² and, as a result, that Mobex's licenses should be deemed to have automatically cancelled pursuant to the Commission's rules.⁴³

16. Rejecting this argument, the Wireless Bureau explained that, in preparing for the auction of geographic AMTS licenses, it had reviewed and audited the licensing records of the site-based AMTS facilities "to determine whether all licensed AMTS facilities [including those licensed to Mobex] were properly constructed and operational."⁴⁴ It deleted from its licensing database any unconstructed licenses.⁴⁵ Call signs KAE889 and WRV374 were not deleted.

³⁹ See, e.g., Havens Opposition at p. 7.

⁴⁰ See *In the Matter of Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939, 24941-42, ¶ 6 (WTB 2004); *In the Matter of Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390, 3395, ¶ 9 (2010).

⁴¹ *In the Matter of Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004).

⁴² *Id.* at 24941, ¶ 6.

⁴³ See *id.*

⁴⁴ *Id.* at 24940, ¶ 3 (citation omitted).

⁴⁵ See *id.* at 24942, ¶ 6.

Moreover, the Wireless Bureau recognized that even if “the initial activation notices were defective, deeming the licenses for the constructed stations to have automatically canceled as a result would not further the purpose of the construction notification requirement”⁴⁶ or the public interest. The Wireless Bureau thus rejected Mr. Havens’ allegations that Mobex’s licenses, including call signs KAE889 and WRV374, were not timely constructed and denied his petition to deny the renewal and transfer of these licenses.⁴⁷ The Commission later confirmed that the Wireless Bureau had acted properly in denying Mr. Havens’ petition based on alleged defects in the activations notices.⁴⁸ There is no justification – and Mr. Havens has offered none – for the Presiding Judge to disregard the Commission’s earlier findings.⁴⁹ Thus, summary decision on the question of whether call signs KAE889 (locations 3, 4, 13, 20, 30, 34, and 48) and WRV374 (locations 14-16, 18, 25, 33, 35 and 40) were timely constructed is proper and should be granted.

II. Summary Decision On The Issue Of Permanent Discontinuance Is Now Appropriate

17. As discussed above, Maritime’s earlier motion had also sought summary decision on the question of permanent discontinuance.⁵⁰ The Bureau had opposed that motion because Maritime’s legal argument was flawed, but summary decision is now appropriate on this question based on the undisputed facts and the proper application of the permanent

⁴⁶ *Id.*

⁴⁷ *See id.*; *id.* at 24944, ¶ 10.

⁴⁸ *In the Matter of Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390, 3395, ¶ 9 (2010).

⁴⁹ Mr. Havens’ Opposition suggests that there is evidence in the “exhibits involving Mr. Predmore” (Exhibits 1, 2.1, 2.2 and 3.0 to the Havens Opposition) demonstrating that Maritime acquired licenses from Mobex that had already terminated for non-construction. *See* Havens Opposition at p. 7. These exhibits do not offer any such evidence. To the contrary, Mr. Predmore’s declaration (Exhibit 3.0) states that “[i]t is beyond question that WRV374 was timely built by Mobex’s subsidiary Regionet and operated properly by Mobex during its ownership of the licenses.” Exhibit 3.0 to Havens Opposition, ¶ 18. Although Mr. Predmore also states that Mobex stored a large amount of documents with Nation’s Capital Archives & Storage Systems Inc. in Virginia, these documents were not produced during the course of discovery in this proceeding. The discovery period on Issue (g) has long since concluded.

⁵⁰ *See* Maritime’s Motion at pp. 9-12.

discontinuance standard.

A. Legal Standard for Permanent Discontinuance Of Part 80 AMTS Licenses

18. Pursuant to Section 1.955(a)(3) of the Commission’s rules, “[a]uthorizations automatically terminate, without specific Commission action, if service is permanently discontinued. The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.”⁵¹ Although neither the Commission authorization nor the individual service rules provide a definition of permanent discontinuance for the Part 80 AMTS licenses at issue here, AMTS precedent provides sufficient guidance for the Presiding Judge to render a decision on the question of permanent discontinuance.

19. In *Northeast Utilities Service Co.*,⁵² the Wireless Bureau concluded that it would “evaluate claims of permanent discontinuance [of Part 80 AMTS licenses] on a case-by-case basis.”⁵³ In that case, the licensee suspended operations at the licensed location – the World Trade Center in New York City – when it was destroyed by the September 11, 2001 terrorist attack. The Wireless Bureau concluded that the licensee’s due diligence to secure a new space to operate demonstrated that the discontinuance was not yet permanent.⁵⁴ In reaching that conclusion, the Wireless Bureau considered evidence of communications beginning in 2005, four years after the destruction of the World Trade Center, between the licensee and the entity administering the Freedom Tower antenna concerning the licensee’s request to operate on the

⁵¹ 47 C.F.R. § 1.955(a)(3).

⁵² *In the Matter of Applications of Northeast Utilities Service Co.*, 24 FCC Rcd 3310 (WTB 2009).

⁵³ *Id.* at 3314, ¶ 10.

⁵⁴ *See id.*

new tower.⁵⁵ The evidence showed that the licensee was making reasonable efforts to resume operations at the site.

20. A year later, in *Mobex Network Services, LLC*,⁵⁶ the Commission provided additional guidance concerning the permanent discontinuance of AMTS operations. The Commission concluded that evidence that a licensee had removed equipment from the licensed location in August 2003, nearly seven years earlier, and thus had not received electric power supply at that location after that date “is sufficient to demonstrate permanent discontinuance of operation.”⁵⁷

B. The Undisputed Facts Demonstrate That Operations At The 16 Remaining Site-Based Facilities Were Not Permanently Discontinued

21. Under this AMTS precedent, the undisputed facts demonstrate that operations at the 16 remaining site-based facilities have not permanently discontinued pursuant to Section 1.955(a)(3) of the Commission’s rules. Of the 16 remaining site-based facilities, six (6) are subject to and/or affected by a third-party spectrum lease agreement that was in effect before Maritime acquired the authorizations in late 2005 and is still in effect today.⁵⁸ Eight (8) additional facilities were operating and providing maritime and/or land mobile communications services to AMTS subscribers at the time of Maritime’s acquisition and are now subject to and/or being used pursuant to third-party spectrum lease agreements negotiated by Maritime after the

⁵⁵ See *id.*; *id.* at 3316 n. 19 and n. 40.

⁵⁶ *In the Matter of Mobex Network Services, LLC*, 25 FCC Rcd 3390 (2010).

⁵⁷ *Id.* at 3395, ¶ 10. See also Supplement to Petition for Reconsideration, filed Feb. 3, 2006 and entered in ULS in connection with file No. 0001370848 on Feb. 7, 2006, filed herewith as Exhibit 3, at p. 45.

⁵⁸ WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center).

demand for maritime and/or land mobile communications services dwindled.⁵⁹ The last two (2) facilities [REDACTED].⁶⁰ [REDACTED]

[REDACTED]. At all times, Maritime has maintained equipment capable of resuming operations at each of these locations. Accordingly, summary decision should be granted in favor of the Bureau and Maritime on the question of permanent discontinuance.

1. Call Signs Currently Subject To Spectrum Lease Agreements Executed Before Maritime's Acquisition

22. Call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center) have not permanently discontinued operations since Maritime acquired them in late 2005.⁶¹ At that time, each of these call signs was already restricted and/or subject to a third-party spectrum lease agreement that is still in effect today.

23. **WRV374 (Locations 14, 15, 16, 18, 25 and 33).** Call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center) are subject to or affected by the spectrum lease agreement executed between Mobex Network Services LLC (Mobex) and

⁵⁹ WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain).

⁶⁰ WRV374-35 (Rehobeth) and WRV374-40 (Hamden).

⁶¹ [REDACTED]. See Maritime's Response to Interrogatories, served Oct. 31, 2012 (Maritime's October 31 Response), filed herewith as Exhibit 4, at p. 3, ¶ 1. [REDACTED]. See id.

Pinnacle Wireless, Inc. (Pinnacle), effective [REDACTED].⁶² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁶³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁶⁴

24. Pinnacle has built its network within the contours of WRV374-15 (Verona) and WRRV374-25 (Perrinville).⁶⁵ This spectrum is used by the NJTA along the Garden State Parkway and New Jersey Turnpike, and by the New Jersey Sports and Entertainment Authority (NJSEA) at the Meadowlands Complex, which includes Giants Stadium and the New Jersey Devils' hockey arena.⁶⁶ [REDACTED]

[REDACTED]

[REDACTED].⁶⁷ [REDACTED]

[REDACTED].⁶⁸

⁶² See Pinnacle Wireless, Inc. Response to Enforcement Bureau's First Set of Interrogatories and First Set of Requests for Production of Documents (Pinnacle Wireless Response), served on April 10, 2012, filed herewith as Exhibit 5, at pp. 2-3, 7; Spectrum Lease Agreement between Pinnacle Wireless, Inc. and Mobex Network Services, LLC, dated December 22, 2005, filed herewith as Exhibit 6. [REDACTED]

[REDACTED]. See Exhibit 5 (Pinnacle Wireless Response) at p. 3; see also Maritime's Response to Interrogatories, served March 13, 2012 Responses (Maritime's March 13 Response), filed herewith as Exhibit 7, at pp. 2-3.

⁶³ Exhibit 5 (Pinnacle Wireless Response) at p. 4.

⁶⁴ *Id.*

⁶⁵ See Exhibit 7 (Maritime's March 13 Response) at p. 2.

⁶⁶ See *id.*

⁶⁷ Exhibit 5 (Pinnacle Wireless Response) at p. 4.

⁶⁸ See *id.*

25. Because of the overlapping nature of 38 dBu service contours and 20 dBu protection contours at issue with this spectrum, Pinnacle's operation of its network "impacts and restricts operations from other Maritime incumbent sites with contours overlapping northern New Jersey operations, including WRV3754-16 in Allentown, PA, WRV374-33 in New York City and WRV374-18 in Valhalla, NY."⁶⁹

26. These undisputed facts demonstrate that operations at calls signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center) have not permanently discontinued since Maritime acquired these authorizations in late 2005.

2. Call Signs Currently Subject To Spectrum Lease Agreements Negotiated By Maritime

27. Call signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) were operating and providing maritime and/or land mobile communications services to AMTS subscribers at the time of Maritime's acquisition.⁷⁰ Although the demand for such services dwindled and service was discontinued at each of these call signs for a limited time,⁷¹ unlike the licensee in *Mobex Network Services*, Maritime never removed equipment from these locations⁷² or discontinued

⁶⁹ Exhibit 7 (Maritime's March 13 Response) at pp. 2-3.

⁷⁰ See Maritime's Supplemental Responses Per Order FCC 12M-38 (Responses Per Order FCC 12M-38), filed on Aug. 9, 2012, filed herewith as Exhibit 8, at p. 6, ¶ 9; see also Exhibit 4 (Maritime's October 31 Response) at pp. 4-5.

⁷¹ See Exhibit 8 (Responses Per Order FCC 12M-38) at p. 5, ¶ 7.

⁷² See Maritime's Amended and Further Supplemental Response to Interrogatories, served on March 16, 2012 (Amended Response), filed herewith as Exhibit 9, at p. 4, ¶ 13.

electric supply to its equipment at these locations.⁷³ In addition, the evidence here, like that in *Northeast Utilities*, shows that Maritime made reasonable efforts to resume operations at these sites. For instance, Maritime engaged multiple third-party consultants who investigated the feasibility of deploying this spectrum for “AIS-B Coast Guard vessel tracking, emergency alert nationwide systems, XM Satellite [R]adio’s terrestrial wireless transmissions[,] container tracking in ports and along waterways, SmartGrid, Positive Train Control, and interoperable communications for public safety in conjunction with Maritime’s Critical RF subsidiary’s technology.”⁷⁴ Maritime also retained Spectrum Bridge and NRTC to broker this spectrum.⁷⁵ As a result of these marketing efforts, Maritime successfully leased call signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain).

28. **WHG750.** Effective February 18, 2010, Maritime leased call sign WHG750 to Duquesne Light Company (Duquesne).⁷⁶ Duquesne constructed multiple facilities within the coverage area of call sign WHG750, which began operating as early as May 2010.⁷⁷ Duquesne

⁷³ Cf. Maritime’s Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, served March 19, 2012 (Errata), filed herewith as Exhibit 10, at Table 3. Call signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) are not listed among those call signs for which utilities were ever disconnected.

⁷⁴ Exhibit 8 (Responses Per Order FCC 12M-38) at p. 5, ¶ 7; *see also* Maritime’s Response to Interrogatories, served Feb. 6, 2012 (Maritime’s February 6 Response), filed herewith as Exhibit 11, at pp. 6-8, ¶ 14.

⁷⁵ *See* Exhibit 11 (Maritime’s February 6 Response) at p. 8.

⁷⁶ *See* Asset Purchase Agreement entered into between Duquesne Light Company and Maritime Communications/Land Mobile, dated Feb. 18, 2010, filed herewith as Exhibit 12; *see also* Duquesne Light Company’s First Amended Response to Enforcement Bureau’s First Set of Interrogatories, served on Sept. 6, 2012 (Duquesne Response), filed herewith as Exhibit 13, at p. 2; Maritime’s Further Supplemental Response to Interrogatories, served on Feb. 28, 2012 (Maritime’s Further Response), filed herewith as Exhibit 14, p. 2, ¶ 8.

⁷⁷ *See* Exhibit 13 (Duquesne Response) at pp. 4-5, ¶¶ 5-6.

is still operating these facilities.⁷⁸

29. **KAE889 (Locations 3 and 13).** Maritime entered into a Spectrum Agreement with Evergreen School District (Evergreen) that has been in effect since October 30, 2008.⁷⁹ ■

■⁸⁰ Evergreen prepaid the fee for the full term to Maritime in February 2009.⁸¹

30. Evergreen uses the spectrum covered by KAE889-3 (Livingston Peak) in connection with a 2-site, 3-Channel Motorola/Trident Passport radio system which “is used to coordinate student transportation and safety, as well as Evergreen emergency communications with all schools and key personnel.”⁸² Evergreen continues to operate this radio system today.⁸³ Due to overlapping service and interference contours, Maritime’s spectrum lease agreement with Evergreen restricts use of call sign KAE889-13 (Portland).⁸⁴ In other words, if Evergreen, or another entity, were to operate call sign KAE889-13 (Portland), it would interfere with the operations of KAE889-3 (Livingston Peak) and other KAE889 locations.⁸⁵

31. These undisputed facts demonstrate that operations at call signs KAE889-3 (Livingston Peak) and KAE889-13 (Portland) have not been permanently discontinued since Maritime acquired them.

⁷⁸ See *id.* at p. 3, ¶ 4; p. 6, ¶ 9.

⁷⁹ See Agreement between Evergreen School District and Maritime, dated Oct. 30, 2008, filed herewith as Exhibit 15.

⁸⁰ See Second Amendment to Spectrum Use Agreement No. 220-060 (production number G_028813), filed herewith as Exhibit 16.

⁸¹ See Declaration of Evergreen School District Concerning Lease of Spectrum From Maritime, dated March 14, 2013 (Evergreen Decl.), filed herewith as Exhibit 17, at ¶ 3.

⁸² See *id.* at ¶ 6.

⁸³ See *id.* at ¶ 5.

⁸⁴ See Exhibit 7 (Maritime’s March 13 Response) at p. 4, ¶ 8.

⁸⁵ See *id.*

32. **KAE889 (Locations 4, 20, 30, 34 and 48).** Maritime leased KAE889-4 (Rainier Hill), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) to Puget Sound Energy, Inc. (PSE), effective May 20, 2010.⁸⁶ PSE is constructing a private mobile radio (PMR) network system that will use the AMTS spectrum it leases from Maritime, together with AMTS spectrum PSE leases from Mr. Havens' companies – Environmental LLC and Skybridge Spectrum Foundation – to provide “PMR service to approximately 2,000 vehicular and portable radio units used by PSE’s employees and contractors for critical communications related to the construction, operation and maintenance of PSE’s electric and gas utility operations.”⁸⁷ Between August 24, 2010 and August 26, 2010, PSE personnel visited Maritime’s equipment installed at KAE889 (Locations 4, 20, 30, 34 and 48) and observed the operation of Maritime’s transmitters at those locations.⁸⁸ PSE personnel, together with Maritime employee Tim Smith, performed tests confirming the transmitting frequencies and output power of Maritime’s transmitters.⁸⁹ They also conducted Voltage Standing Wave Radio testing of antenna lines at each of these locations.⁹⁰ PSE confirmed that Maritime’s facilities at each of these locations were capable of transmitting.⁹¹ Maritime’s lease with PSE is still in effect.⁹²

⁸⁶ See Asset Purchase Agreement between Maritime and PSE, effective May 20, 2010, filed herewith as Exhibit 18, at Exhibit C; Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s First Set of Interrogatories, served on Aug. 29, 2012 (PSE Response), filed herewith as Exhibit 19, at p. 5, ¶ 1; *see also* Exhibit 14 (Maritime’s Further Response) at p. 2, ¶ 8.

⁸⁷ Exhibit 19 (PSE Response) at p. 6.

⁸⁸ *See id.* at pp. 12-13.

⁸⁹ *See id.*

⁹⁰ *See id.* at p. 13.

⁹¹ *See id.*

⁹² *See id.* at p. 5.

33. These undisputed facts demonstrate that operations at calls signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) have not permanently discontinued.

3. Call Signs That Maritime Is Actively Marketing

34. **WRV374 (locations 35 and 40).** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁹³ [REDACTED]

[REDACTED]

[REDACTED]⁹⁴ [REDACTED]

[REDACTED]

[REDACTED]⁹⁵ [REDACTED]

[REDACTED]

[REDACTED]⁹⁶

Maritime is still actively marketing these locations with Spectrum Bridge.⁹⁷ In particular, Maritime marketed this spectrum to AMTRAK, the MetroNorth Rail Road and the Massachusetts Bay Transportation Authority (MBTA) for use with Positive Train Control.⁹⁸

⁹³ See Exhibit 4 (Maritime's October 31 Response) at p. 4.

⁹⁴ See *id.*

⁹⁵ See *id.* at p. 5, fn. 5.

⁹⁶ See *id.*; see also Exhibit 11 (Maritime's February 6 Response) at pp. 6-8.

⁹⁷ See Declaration of John Reardon, dated Sept. 10, 2013, filed herewith as Exhibit 20.

⁹⁸ See *id.*

Maritime has at all times maintained equipment at these locations that is transmitting signals and is capable of providing service as soon as Maritime is able to successfully lease or assign these locations.⁹⁹ Thus, the undisputed facts demonstrate that operations at these call signs have not permanently discontinued.

III. Summary Decision Is The Proper Vehicle To Resolve Issue (g) Despite Mr. Havens' Choice To Proceed *Pro Se*

35. In *Order*, FCC 13M-16, the Presiding Judge raised a concern about rendering a summary decision against Mr. Havens because he has persisted in appearing *pro se* in this hearing proceeding, despite numerous Orders to obtain counsel.¹⁰⁰ Mr. Havens' choice to proceed *pro se*, however, does not make summary decision improper.

36. Mr. Havens is not the typical *pro se* party to whom the Commission was referring when it raised the possibility of unfairness in using summary decision against parties who appear without counsel.¹⁰¹ In his own words, Mr. Havens claims to “know[] far more about the facts, and probably more about the specific AMTS law ... involved in [I]ssue (g) ... than any attorney at law in [or] outside of DC, or in the FCC.”¹⁰² He is well-acquainted with the Commission's procedural and substantive rules. In fact, he has filed hundreds of pleadings, without the benefit of counsel, before the Wireless Bureau and the Commission for more than 10 years concerning the very issues – and in some cases, the very licenses – designated for hearing in this

⁹⁹ See, e.g., Declaration of Cybercomm, Inc., dated Aug. 26, 2013, filed herewith as Exhibit 21; Declaration of Robert W. Meister, dated Sept. 10, 2013, filed herewith as Exhibit 22; see also Exhibit 10 (Errata) at Table 3. Call signs WRV374-35 (Rehobeth) and WRV374-40 (Hamden) are not listed among those call signs for which utilities were ever disconnected.

¹⁰⁰ See *Order*, FCC 13M-16 (ALJ, rel. Aug. 14, 2013), at pp. 8-9, ¶¶ 20-21.

¹⁰¹ See *In the Matter of Summary Decision Procedures*, 34 F.C.C.2d 485, 488 ¶ 6 (1972).

¹⁰² Further Notice of Appearance with Reasons, filed by Mr. Havens on May 24, 2013, at p. 6, ¶ 5.

proceeding.¹⁰³ In addition, Mr. Havens filed *pro se* a comprehensive response to the motion for summary decision filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (Choctaw) in this proceeding.¹⁰⁴ He also prepared and filed, without the benefit of counsel, a thorough opposition and reply brief to Maritime and Choctaw's application for *Second Thursday* relief pending before the Wireless Bureau.¹⁰⁵ Mr. Havens plainly has the ability "to understand and respond to a motion for summary decision" in this proceeding.¹⁰⁶

37. Moreover, Mr. Havens' arguments concerning the timely construction of Maritime's site-based licenses were fully developed in his September 22, 2012 Opposition to Maritime's earlier motion for partial summary decision, which was prepared and filed by experienced counsel.¹⁰⁷ Thus, especially regarding the question of timely construction, Mr. Havens would not be unfairly prejudiced by the Presiding Judge now ruling on the Bureau and Maritime's motion for summary decision.

38. Most importantly, as the Presiding Judge recognized in *Order*, FCC 13M-16, Mr. Havens "has repeatedly been warned about (and discouraged from) appearing *pro se* due to his propensity to cause 'substantial delay and confusion on questions having nothing to do with the

¹⁰³ See, e.g., *In the Matter of Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004) (filed petitions to deny concerning call signs KAE889 and WRV374); *In the Matter of Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390 (2010) (filed petition for reconsideration and application for review concerning call signs KAE889 and WRV374).

¹⁰⁴ See Motion to Dismiss and in the Alternative Opposition to Motion for Summary Decision, filed by Mr. Havens on Feb. 7, 2013.

¹⁰⁵ See, e.g., Petition to Dismiss or Deny, and Comments of SkyTel-1 Entities, filed May 9, 2013 in WT Docket No. 13-85; Reply to Oppositions to Petition to Deny, and Reply to Comments (initial and reply comments), filed June 20, 2013 in WT Docket No. 13-85.

¹⁰⁶ *In the Matter of Summary Decision Procedures*, 34 F.C.C.2d at 488, ¶ 6.

¹⁰⁷ See Opposition to Motion for Partial Summary Decision, filed Sept. 17, 2012, at pp. 9-14.

merits of this complex litigation....”¹⁰⁸ For these reasons, the Presiding Judge has, on multiple occasions, ordered Mr. Havens – and the SkyTel entities with whom Mr. Havens’ interests are inextricably intertwined – to obtain counsel.¹⁰⁹ Mr. Havens has persisted in flaunting those Orders.¹¹⁰ In sum, his choice to proceed *pro se* should not be allowed to prejudice the Bureau, Maritime, and the other parties with the unnecessary burden and expense of a hearing when Mr. Havens has not identified any material facts in genuine dispute and the questions before the Presiding Judge are appropriate for summary decision.

Conclusion

39. For the foregoing reasons, the Bureau and Maritime respectfully request that the Presiding Judge issue an Order concluding that summary decision is proper on both the construction and permanent discontinuance aspects of Issue (g). Specifically, the Bureau and Maritime respectfully request that the Presiding Judge issue an Order concluding that (1) call signs WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), KAE889-48 (Tiger Mountain), WRV374-14 (Selden), WRV374-15 (Verona) WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WRV374-35 (Rehobeth), and WRV374-40 (Hamden) were timely constructed within two years of their grant, as required by Section 80.49(a)(3) of the

¹⁰⁸ Order, FCC 13M-16 (ALJ, rel. Aug. 14, 2013) at p. 8, ¶ 19. See also Order, FCC 12M-52 (ALJ, rel. Nov. 15, 2012), at p. 3 (even when Mr. Havens was allowed to appear at a prehearing conference without counsel, he “caused confusion by frequently interrupting counsel and the Presiding Judge”).

¹⁰⁹ See, e.g., Order, FCC 12M-7 (ALJ, rel. Jan. 27, 2012); Order, FCC 12M-16 (ALJ, rel. Mar. 9, 2012); see also Order, FCC 12M-25 (ALJ, rel. May 21, 2012) (noting that “Mr. Havens should step aside and hire or rehire one or more of his many qualified lawyers”); Order, FCC 12M-52 (ALJ, rel. Nov. 15, 2012) (ordering Mr. Havens to obtain counsel for the SkyTel entities); Order, FCC 13M-8 (ALJ, rel. May 1, 2013) (same).

¹¹⁰ Mr. Havens has still not retained counsel for SkyTel.

Commission's rules, and (2) operations at these same site-based facilities have not been permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.

Respectfully submitted,

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December 2, 2013

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 2nd day of December, 2013, sent by first class United States mail copies of the foregoing "JOINT MOTION OF ENFORCEMENT BUREAU AND MARITIME FOR SUMMARY DECISION ON ISSUE G" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
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445 12th Street, S.W.
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